

# **EXHIBIT 3**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN DIEGO**

KARON and L.B. CHIP EDLESON, on behalf of )  
 themselves and all others similarly situated, )

Case No. 37-2007-00071725-CU-BT-CTL

Plaintiffs, )

Judge Steven R. Denton

v. )

AMERICAN HOME SHIELD OF CALIFORNIA, )  
 INC., AMERICAN HOME SHIELD )  
 CORPORATION, and DOES 1-20, )

**STIPULATION OF SETTLEMENT**

Defendants. )

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1        THIS STIPULATION OF SETTLEMENT is entered into as of this \_\_\_\_ day of September,  
2 2008 (the "Settlement Date"), by and among named plaintiffs Karon and L.B. Chip Edleson (the  
3 "Named Plaintiffs"), individually and as representatives of the Class, and defendants American  
4 Home Shield of California, Inc. and American Home Shield Corporation (the "Defendants"), by and  
5 through their attorneys.

6 **I.     PREAMBLE**

7        WHEREAS, on July 24, 2007, this action, captioned *Karon and L.B. Chip Edleson, on behalf*  
8 *of themselves and all others similarly situated, v. American Home Shield of California, Inc.,*  
9 *American Home Shield Corporation, The ServiceMaster Company, and Does 1-20*, No. 37-2007-  
10 00071725-CU-BT-CTL (Superior Court of California, County of San Diego, Steven R. Denton, or  
11 his successor, presiding (the "Court")) (the "Action"), which alleges that American Home Shield  
12 failed to fulfill contractual obligations to its customers and breached other duties under California  
13 law, was filed as a putative nationwide class action in the Superior Court of California for the  
14 County of San Diego;

15        WHEREAS, the Defendants vigorously denied, and continue to vigorously deny, any  
16 wrongdoing and any liability in relation to the allegations contained in the complaint filed in the  
17 Action (the "Complaint");

18        WHEREAS, the parties have engaged in substantial discovery to evaluate the merits of the  
19 parties' respective claims and defenses, and have engaged in arm's-length settlement negotiations;  
20 and

21        WHEREAS, prompted in part by this Action and during the course of this Action, American  
22 Home Shield Corporation has changed its business practices nationwide, including by making  
23 available FlexPlan Contracts to its customers;

24        NOW THEREFORE, it is agreed, by and among the undersigned, that this Action shall be  
25 settled and dismissed on the merits and with prejudice, without costs to Plaintiffs or Defendants  
26 (except as hereinafter provided), subject to the approval of the Court on the terms and conditions  
27 outlined herein.

1     **II.     DEFINITIONS**

2             As used herein, the following terms have the respective meanings specified, which shall be  
3     equally applicable to both the singular and plural forms:

4             2.1.     “Agreement” means this agreement and all of its attachments and exhibits, which the  
5     settling parties understand and agree set forth all material terms and conditions of the Settlement  
6     between them and which is subject to this Court’s approval.

7             2.2.     “AHS Competitor” means any Person (other than AHS) that issues, offers for sale, or  
8     underwrites in North America any of the various service contracts commonly known as “home  
9     warranties,” and going by various names in different markets and under different regulatory regimes,  
10    including designations such as “service contract,” “extended service contract,” “residential service  
11    contract,” “home service contract,” “home protection contract,” and “warranty contract.”

12            2.3.     “Alternative Johnson Bottini LLP Attorney” means Frank J. Johnson.

13            2.4.     “American Home Shield” or “AHS” means American Home Shield Corporation, a  
14    Delaware Corporation, together with all its direct and indirect subsidiaries, including American  
15    Home Shield of California, Inc.

16            2.5     “Attorneys Fees & Expenses” has the meaning ascribed it in paragraph 8.2.

17            2.6.     “Business Day” means any day that is not a Saturday, Sunday or the day set aside for  
18    observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial  
19    Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or  
20    Christmas Day, and any other day declared a holiday by the President or Congress.

21            2.7.     “Claims” means any and all claims, demands, debts, rights, causes of action, suits,  
22    actions, damages, costs, expenses, compensation, requests for compensation or reimbursement,  
23    obligations, liabilities, penalties, attorneys fees, or losses in law or equity, of whatever kind or  
24    nature, whether or not known, ripe or mature.

25            2.8.     “Class” means all Persons in the United States who purchased or were issued any  
26    Home Warranty Contract during the Class Period. Excluded from the Class are Defendants, their  
27    parents, subsidiaries, affiliates, officers, directors, and employees; Judge Steven R. Denton; and any  
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1 judge and any member of the family of any judge who has jurisdiction over this matter now or in the  
2 future.

3 2.9. "Class Counsel" means counsel appointed by the Court as counsel to represent the  
4 Class and/or the Settlement Class. Unless the Court orders otherwise, "Class Counsel" means  
5 Johnson Bottini LLP and Chapin Wheeler LLP.

6 2.10. "Class Member" means the Named Plaintiffs and any Person that is a member of the  
7 Class.

8 2.11. "Class Notice" means the notice provided to Class Members pursuant to  
9 paragraph 7.3 in the form attached as Exhibit A.

10 2.12. "Class Notice Date" means the first date on which Defendants, as provided by  
11 paragraph 7.3, (i) have substantially completed the sending of the Class Notice; (ii) have made  
12 available the information required to be made available via an Internet website; and (iii) stand  
13 prepared to make available, in response to any Class Member requests that may be received by mail,  
14 the information required to be made available by paragraph 7.3.

15 2.13. "Class Period" means the period beginning on July 24, 2001 up to and including the  
16 date on which the Preliminary Approval Order is issued.

17 2.14. "Contractor Network" means a subset of the larger universe of independent home  
18 repair contractors engaged by AHS to make service calls to Home Warranty Contract customers,  
19 which subset is defined as those who have executed a written contract with AHS containing a  
20 commitment by AHS to attempt to dispatch to such contractor a specified number of service calls per  
21 annum, also known as a "call commitment."

22 2.15. "Contractor Relations Initiative" means the 24-month process described in paragraph  
23 5.3.

24 2.16. "Contractor Relations Practices" means, generally, AHS's practices respecting  
25 selecting, recruiting, training, dispatching, rating, evaluating, terminating, monitoring,  
26 compensating, incentivizing, rewarding, penalizing, disciplining, following up service calls by,  
27 allocating services calls to, authorizing repairs by, allowing non-covered charges to be collected by,  
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1 supervising repair or replacement work performed by, enforcing compliance with contract terms by,  
2 overseeing compliance with applicable permitting or other legal requirements by, or otherwise  
3 supervising, managing, or monitoring independent home repair contractors that AHS engages,  
4 authorizes and/or directs to make service calls for purposes of providing services pursuant to Home  
5 Warranty Contracts.

6 2.17. "Day" or "day" means calendar day unless identified as "Business Day."

7 2.18. "Denied Claim" means a Settlement Class Member request received by American  
8 Home Shield for service on an item covered under his/her Home Warranty Contract during the Class  
9 Period, where repair or replacement services were denied by AHS, in whole or in part, or where the  
10 Class Member deemed inadequate a cash payment they received from AHS in lieu of repair or  
11 replacement services.

12 2.19. "Effective Date" means the date on which the time for filing an appeal under  
13 California Rule of Court Rule 8.104, as may be amended, expires without any appeal being filed  
14 from a Final Judgment and Order of the Court approving the Settlement. In the event that one or  
15 more such appeal(s) from such a final decision of the Court is timely brought, the Effective Date will  
16 be the date on which such appeal(s) are finally resolved in favor of upholding the Settlement without  
17 any modification, except any downward adjustment in attorney fees, costs, and expenses that may be  
18 ordered by the Court as permitted by paragraph 8.1, and without any possibility of a further appeal  
19 to, or any discretionary review by, any court superior to this Court.

20 2.20. "Escrow Account" has the meaning ascribed it in paragraph 8.2.

21 2.21. "Escrow Agent" has the meaning ascribed it in paragraph 8.2.

22 2.22. "Fairness Hearing" means a hearing conducted by this Court after the Class Notice  
23 Date for the purpose of (i) determining the fairness, adequacy, and reasonableness of the Agreement  
24 pursuant to class action procedures and requirements; and (ii) entering a Final Judgment and Order.

25 2.23. "Final Judgment and Order" means a final order (that cannot be further appealed)  
26 entered by this Court after the Fairness Hearing granting its approval of the Settlement pursuant to  
27 paragraph 7.8 in substantially the form attached as Exhibit B.

1           2.24. "FlexPlan Contract" means a Home Warranty Contract issued by AHS with the  
2 features and attributes described in paragraph 5.2. An exemplar of the FlexPlan Contract which  
3 shall be deemed to satisfy the conditions of paragraph 5.2 is attached as Exhibit C. Such exemplar  
4 may be modified by AHS at anytime provided it contains the features described in paragraph 5.2.

5           2.25. "Home Warranty Contract" means and includes any of the various service contracts  
6 issued to the public and/or underwritten by AHS, or by a parent or affiliate of AHS, commonly  
7 known as "home warranties," and going by various names in different markets and under different  
8 regulatory regimes, including designations such as "service contract," "extended service contract,"  
9 "residential service contract," "home service contract," "home protection contract," and "warranty  
10 contract."

11           2.26. "Lead Class Counsel" means the Person appointed by the Court to discharge the  
12 duties of Lead Class Counsel as set forth in this Agreement. Unless the Court orders otherwise,  
13 "Lead Class Counsel" means Francis A. Bottini, Jr.

14           2.27. "Named Plaintiffs Payment" has the meaning ascribed it in paragraph 5.4.

15           2.28. "Opt-Out List" means the complete, final, and accurate list of all properly submitted  
16 exclusion requests received by Class Counsel and provided to counsel for Defendants, as required  
17 under paragraph 7.5.

18           2.29. "Person" means any natural person, any legal entity, including a limited or general  
19 partnership, a corporation, a limited liability company, an association, a joint stock company, a trust,  
20 a joint venture, sole proprietorship, an unincorporated organization, any other form of legal entity,  
21 and/or any governmental body (including any department, agency, commission, authority,  
22 administration, or political subdivision thereof), whether federal, state, local or other.

23           2.30. "Plaintiffs" means the Named Plaintiffs and all Class Members.

24           2.31. "Preliminary Approval Order" means an order entered by this Court preliminarily  
25 approving the Settlement pursuant to paragraph 7.2 in substantially the form attached as Exhibit D.

26           2.32. "Quarterly Meeting" has the meaning ascribed it in paragraph 5.3.a.

27           2.33. "Released Claims" means any and all Claims set forth in paragraphs 10.1 and 10.2.  
28



1           2.34. "Released Parties" means the Defendants, their respective, direct or indirect,  
2 subsidiaries, divisions, partners, limited partners, owners, investors, holding companies, parents,  
3 affiliates (regardless of the form of the legal entity, e.g., corporation, limited liability company,  
4 general or limited partnership), including their respective predecessors and successors, and their  
5 respective present and former officers, directors, employees, principals, agents, attorneys, and/or any  
6 other Person for which any of these Persons shall have a direct or indirect interest, or for which they  
7 may otherwise be responsible, as of any given date.

8           2.35. "Releases" means collectively the terms of the releases, covenants not to sue, and  
9 agreed-on dismissal set forth in paragraphs 10.1, 10.2, 10.3, 10.4, and 10.5.

10          2.36. "Review Desk" means the review process established by American Home Shield as  
11 described in paragraph 5.1.

12          2.37. "Settlement" means the terms of the parties' agreed-on settlement as reflected and  
13 embodied in this Agreement.

14          2.38. "Settlement Class" means all Class Members that do not opt out of the Settlement in a  
15 timely and valid manner in accordance with the procedures set forth herein.

16          2.39. "Settlement Class Member" means the Named Plaintiffs and any Person that is a  
17 member of the Settlement Class.

18          2.40. "Submission" has the meaning ascribed it in paragraph 5.1.f.

19          2.41. "Submission Period" means a period of ninety (90) days, beginning thirty (30) days  
20 after the Effective Date.

21          2.42. "Submittal Form" means the form obtained from AHS that must be used to make  
22 submissions to the Review Desk. A copy of a Submittal Form is attached as Exhibit E.

23          2.43. "Suit" means any lawsuit, suit, action, proceeding, litigation, legal representation or  
24 complaint brought or pending in any federal, state, administrative, judicial, arbitral, or other forum,  
25 whether direct, derivative or representational.

26          2.44. "Suit Intention Notice Date" has the meaning ascribed it in paragraph 5.1.n.  
27  
28

1  
2 **III. CLAIMS OF THE NAMED PLAINTIFFS AND BENEFITS OF SETTLEMENT**

3 The Named Plaintiffs believe the claims asserted in the Action have merit. However, the  
4 Named Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued  
5 proceedings necessary to prosecute the Action against the Defendants through trial and through  
6 appeals. Named Plaintiffs and Class Counsel have also taken into account the uncertain outcome  
7 and the risk of any litigation, especially a complex action such as this Action, as well as the  
8 difficulties and delays inherent in such litigation. Class Counsel are also mindful of the inherent  
9 problems of proof and possible defenses to the claims asserted in the Action. Class Counsel believe  
10 the Settlement confers substantial benefits to the Settlement Class. Based on their evaluation, Class  
11 Counsel have determined that the Settlement is in the best interests of the Named Plaintiffs and the  
12 Class.

13 **IV. DENIAL OF WRONGDOING OR LIABILITY**

14 4.1. This Agreement constitutes the resolution of disputed claims and is for settlement  
15 purposes only. Defendants deny that they have violated any law; deny that they have breached any  
16 agreement with, or obligation to, Named Plaintiffs or the Class Members (or anyone else); deny any  
17 liability to Named Plaintiffs or the Class Members (or anyone else) for Released Claims; and deny  
18 all the allegations of wrongdoing recited in the Complaint.

19 4.2. Notwithstanding anything else herein, neither the fact of, nor any provision  
20 contained herein, nor any action taken hereunder, shall constitute or be construed as an admission of  
21 any liability or wrongdoing, or recognition of the validity of any allegation of fact or contention of  
22 law made by Plaintiffs in this Action or in any other Suit.

23 4.3. This Agreement, and statements made in negotiating this Settlement, and any  
24 actions taken by Defendants hereunder, shall not be offered or be admissible in evidence or used in  
25 any fashion against Defendants in any Suit for any purpose, except in a Suit to enforce the terms  
26 hereof that is brought by Named Plaintiffs or Class Members against Defendants. Nothing herein  
27 shall be construed to preclude the Released Parties from offering this Agreement and the Releases in  
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1 defense of any Claims, including Suits brought by Named Plaintiffs or other Class Members, at any  
2 time.

3 **V. SETTLEMENT CONSIDERATION**

4 In consideration for the full, complete, irrevocable, and final Settlement of this Action and in  
5 consideration for dismissal of this Action with prejudice and in consideration for the Releases  
6 contained herein, American Home Shield will provide benefits to Settlement Class Members as  
7 follows:

8 5.1. ***Review Desk.*** AHS will establish the Review Desk.

9 a. Except as otherwise provided herein, the Review Desk will consider  
10 Submissions from any Settlement Class Member who experienced a Denied Claim during the Class  
11 Period.

12 b. Settlement Class Members wishing to submit their Denied Claims to the  
13 Review Desk must make a Submission.

14 c. AHS will make Submittal Forms available to Settlement Class Members  
15 via (i) a dedicated website; (ii) a dedicated 1-800 telephone number; and (iii) a dedicated United  
16 States Post Office Box address, all three of which will be created and maintained by AHS at AHS's  
17 expense. Settlement Class Members may make Submissions to the Review Desk via mail sent to a  
18 designated Post Office Box address, via sending an electronic image of the Submission to an e-mail  
19 address identified by AHS, or via any other method that may be permitted by AHS.

20 d. AHS will send Settlement Class Members notification of the opening of  
21 the Submission Period no later than twenty (20) days after the occurrence of the Effective Date via  
22 postcards sent by third-class United States mail to Settlement Class Members' last known addresses,  
23 as this information has been retained by AHS in the ordinary course of business. These postcard  
24 notifications will explain how to obtain Submittal Forms, how to make Submissions, the beginning  
25 and ending dates of the Submission Period, and whatever other information AHS may deem  
26 appropriate.

27 e. AHS will review all Submissions that are received by AHS during the  
28

1 Submission Period.

2           f. Submissions must be made via a signed, dated and fully and properly  
3 completed Submittal Form that provides AHS with, at a minimum, (i) the Settlement Class  
4 Member's name as it appeared on his or her Home Warranty Contract; (ii) the address of the real  
5 property covered by the Class Member's Home Warranty Contract; (iii) the Settlement Class  
6 Member's preferred method for receiving responsive communications from AHS; (iv) a description  
7 of the home system, appliance, or other item at issue; (v) the approximate date (or at a minimum, the  
8 year) during the Class Period of the Settlement Class Member's initial request for Home Warranty  
9 Contract service; (vi) a description of the Settlement Class Member's service request and alleged  
10 Denied Claim; (vii) the reasons the Settlement Class Member believes the same service request  
11 should now be reviewed and the Denied Claim overturned or revised; and (viii) the Settlement Class  
12 Member's present address, telephone number, and e-mail address (collectively, a "Submission").

13           g. At the Settlement Class Member's discretion, additional information may  
14 also be provided via the Submittal Form to bolster his or her Submission, including the following:  
15 (i) photographs; (ii) receipts; (iii) cancelled checks; (iv) correspondence with AHS; (v)  
16 correspondence with contractors (whether or not chosen by AHS) that diagnosed or attempted to  
17 correct the relevant service issue; (vi) a statement providing relevant history or an overview of  
18 events; and/or (vii) other supplemental information.

19           h. Submissions will be considered by AHS and processed in any reasonably  
20 commercially feasible and efficient order that AHS deems appropriate, e.g., prioritization based on  
21 the reverse chronological order of the date of claim. The time for resolving claims will depend on a  
22 number of factors, including the number of Submissions received by the Review Desk. Nothing  
23 herein will be interpreted or construed to mean that AHS will incur any obligation to meet any  
24 specific processing deadline.

25           i. Settlement Class Members for whom AHS determines additional  
26 contractual benefits are appropriate based on its consideration of a Submission will be offered, at  
27 AHS's sole option, one of the following:  
28

1 (1) In cases where the breakdown at issue in the relevant Denied  
2 Claim has not already been resolved, either (i) cash equal to the Settlement Class Member's  
3 estimated out-of-pocket costs for the repair or replacement services determined by AHS to be  
4 covered under the terms of the Settlement Class Member's applicable Home Warranty Contract, or  
5 (ii) provision of those same services by AHS;

6 (2) In cases where the breakdown at issue in the relevant Denied  
7 Claim has already been resolved, either (i) cash equal to the actual out-of-pocket costs for the repair  
8 or replacement services determined by AHS to be covered under the terms of the Settlement Class  
9 Member's applicable Home Warranty Contract, as established and documented by bona fide receipts  
10 for such costs provided to the Review Desk; or (ii) if no such receipts are provided, then AHS's  
11 wholesale cost of such repair or replacement as reasonably determined to apply at the time of the  
12 Denied Claim;

13 (3) Waiver of the contract fee (or some other discount) for one-year of  
14 coverage under a FlexPlan Contract; or

15 (4) Any other compensation deemed to be reasonable by AHS.

16 j. In considering and processing Submissions, AHS may deduct from any  
17 offer an amount equal to the amount of any prior concessions or cash-in-lieu payments, in whatever  
18 form, made to the Settlement Class Member. For the avoidance of doubt, consequential damages  
19 shall not be recovered as the result of, or in connection with, any Submission.

20 k. AHS may seek confirmation of the Settlement Class Member's  
21 out-of-pocket repair or replacement expenses by directly contacting any vendor providing relevant  
22 services or equipment to the Settlement Class Member. In addition, by making a Submission to the  
23 Review Desk, the Settlement Class Member shall be deemed to represent that the Submission is  
24 being made in good faith and authorize AHS to contact the Settlement Class Member  
25 notwithstanding any "do not call" or similar laws that might otherwise limit or constrain AHS's  
26 ability to initiate unsolicited contacts with former customers.

27 l. All releases of whatever type or nature, and in whatever form (including  
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1 by operation of law), of AHS by a Class Member before this Settlement shall be in full force and  
2 effect and not be deemed diminished, waived, or otherwise rendered ineffective by this Agreement.

3 m. Any Settlement Class Member receiving monetary or other benefits as the  
4 result of a Submission will be deemed to have thereby irrevocably released any and all Claims  
5 against the Released Parties arising from, relating to, or otherwise regarding the Denied Claim at  
6 issue in the Submission.

7 n. After the end of the Submission Period, Settlement Class Members who  
8 did not make a Submission may not bring a Suit against AHS based on a Denied Claim unless (A)  
9 the Settlement Class Member provides the following information to AHS by calling 1-877-433-3843  
10 or a successor 1-800 telephone number established and maintained by AHS, at its sole expense and  
11 communicated to Class Members via a posting on AHS's website, (i) the Settlement Class Member's  
12 present address, telephone number, and e-mail address; (ii) the address of the real property covered  
13 by the Class Member's Home Warranty Contract, or other information sufficient for AHS to confirm  
14 that the request is being made by a Class Member; and (iii) an announcement of the Settlement Class  
15 Member's "intention to bring Suit against AHS on a Claim arising in the Edleson Class Period" or  
16 an equivalent statement; and (B) at least fifteen (15) days have elapsed since the date the Settlement  
17 Class Member provided such notice (the "Suit Intention Notice Date"). All applicable statutes of  
18 limitations shall be deemed tolled for the benefit of those Settlement Class Members who provide  
19 such notice for a period of fifteen (15) days beginning on the relevant Suit Intention Notice Date.  
20 Failure of a Class Member to follow this procedure in this paragraph 5.1(n) shall not serve as a bar to  
21 dismiss a Claim, provided, however, that AHS may insist that this procedure be followed before a  
22 Suit may be allowed to proceed.

23 o. Settlement Class Members who make Submissions may not bring a Suit  
24 against AHS for any Denied Claim unless that Denied Claim has been presented to AHS in a  
25 Submission and at least one hundred twenty (120) days have elapsed since that Submission. All  
26 applicable statutes of limitations shall be deemed tolled for the benefit those Settlement Class  
27 Members who make Submissions for a period of one hundred twenty (120) days beginning on the  
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1 date of the relevant Submission. Nothing herein shall be interpreted to mean that a Class Member  
2 may obtain the revival of a Claim that has lapsed and is barred under the applicable limitations  
3 period by submitting the Claim to the Review Desk.

4       **5.2. FlexPlan Offer.** For a period of twenty-four (24) months, beginning on the  
5 Effective Date, and without modifying any existing Home Warranty Contract, AHS will make  
6 available to all Settlement Class Members in good standing an opportunity, upon the expiration of  
7 their current Home Warranty Contract, if any, to enter into a FlexPlan Contract.

8               a. For purposes of this Agreement, a FlexPlan Contract shall mean a Home  
9 Warranty Contract that includes the following features:

10                       (1) No "lack of maintenance" contract exclusion in the core coverage  
11 received by the customer for the standard contract price, or, in the alternative, an express option to  
12 obtain additional coverage at an additional cost that eliminates any otherwise applicable "lack of  
13 maintenance" coverage exception;

14                       (2) An express option to obtain coverage for certain "undetectable  
15 pre-existing conditions"; namely, those conditions not capable of being identified by visual  
16 inspection or simple mechanical test;

17                       (3) An express option to obtain \$250 or more worth of coverage for  
18 upgrades needed in order to correct code violations affecting AHS's ability to make AHS-approved  
19 repairs or replacements; and

20                       (4) An express option to obtain \$250 or more worth of coverage for  
21 procuring permits for AHS-approved repairs or replacements.

22               b. Nothing in this Agreement shall limit or preclude AHS from determining in its  
23 sole discretion the prices at which coverage, including those described above, shall be offered to  
24 Settlement Class Members or other customers or prospective customers.

25       **5.3. Contractor Relations Initiative.** The Contractor Relations Initiative will last for  
26 twenty-four (24) months beginning on the Effective Date, and will recognize that AHS is a for-profit  
27 enterprise that must operate profitably and compete free from undue impediments in a highly  
28



1 dynamic competitive environment. Pursuant to the Contractor Relations Initiative:

2           a.     AHS will meet with Lead Class Counsel, or at the option of Lead Class  
3 Counsel, an Alternative Johnson Bottini LLP Attorney, at least once per quarter in the month  
4 following the close of the calendar quarter to which the meeting relates (a "Quarterly Meeting"), and  
5 Lead Class Counsel shall make himself available more often upon AHS's request, for a confidential  
6 face-to-face discussion of then current Contractor Relations Practices and opportunities for making  
7 improvements thereto. Quarterly Meetings will be held in San Diego at the offices of counsel for the  
8 Defendants.

9           b.     Copies will be given to Lead Class Counsel of all relevant AHS mass  
10 written communications regarding service work order fulfillment practices that are distributed  
11 generally to the Contractor Network after the Effective Date.

12           c.     No later than four (4) months after the Effective Date, AHS will make a  
13 dedicated distribution of written training materials to the Contractor Network conveying the  
14 importance AHS places on honoring the terms of coverage and other terms of Home Warranty  
15 Contracts and the important role that contractors play in this effort. At least ten (10) Business Days  
16 before making this distribution, AHS shall provide copies of the draft written training materials to  
17 Lead Class Counsel for review and comment. Comments suggested by Lead Class Counsel shall be  
18 considered by AHS, and AHS may, in its sole discretion and in the exercise of its business judgment,  
19 revise its written training materials in whole or in part in response to these comments.

20           d.     Beginning no later than the end of the ninth (9th) month after the Effective  
21 Date, AHS will begin to produce quarterly service work order fulfillment performance reports in a  
22 standardized format based on a methodology for sampling outcomes of AHS service calls that shall  
23 be chosen by AHS in its commercially reasonable business judgment. One purpose of these reports  
24 will be to obtain useful measurements of the satisfaction levels of AHS's customers as a group with  
25 the repair and replacement services provided to them by AHS, while bearing in mind that, because  
26 these reports involve sampling, the majority of AHS contractors and service calls likely will not be  
27 reflected in any given quarterly report. Lead Class Counsel will be given confidential access to  
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1 these reports at least ten (10) Business Days before the Quarterly Meetings.

2 e. At least ten (10) Business Days in advance of each Quarterly Meeting,  
3 AHS will provide Lead Class Counsel with a written quarterly report as to the number of  
4 Submissions made and a summary of relief offered in response to those Submissions since the cut  
5 off date for the last quarterly report. During the Submission Period, these reports will be provided to  
6 Lead Class Counsel on a monthly basis no later than the tenth (10th) day of the month following the  
7 month to which the report pertains.

8 f. Class Counsel will be bound to treat all communications and related  
9 materials coming from or directed to AHS as strictly confidential AHS proprietary commercial  
10 information, and Class Counsel will be precluded from accepting representations inconsistent with  
11 Class Counsel's role in carrying out this Settlement.

12 g. AHS and Class Counsel agree to the following specific restrictions on  
13 Class Counsel's activities during the twenty-four (24) month Contractor Relations Initiative period:

14 (1) Class Counsel will neither represent any Person nor act as principal  
15 in any Suit against AHS or any other Released Party nor encourage, assist or participate with any  
16 Person in so doing;

17 (2) Class Counsel will neither represent any Person nor act as principal  
18 in any Suit against any AHS contractor based on events arising from an AHS service call and/or the  
19 contractor's business relationship with AHS; and

20 (3) Class Counsel will not represent or provide legal advice to or  
21 otherwise help or advise in any manner any AHS Competitor except with express written permission  
22 from AHS.

23 h. AHS and Class Counsel will cooperate so as to comply with ethical rules  
24 applicable to the practice of law as regards this Settlement and, in particular, with respect to the  
25 limitations on Class Counsel's activities provided for in this paragraph.

26 5.4. The Named Plaintiffs in this action shall receive an incentive payment of \$5,000  
27 each, or as otherwise specified by the Court, and a compensatory payment of \$5,000 jointly, or as  
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1 otherwise specified by the Court, as compensation for serving as Named Plaintiffs in this action and  
2 as full compensation and complete satisfaction for any alleged injuries individualized as to them that  
3 are described in the Complaint (collectively, the "Named Plaintiffs Payment"). As a part of this  
4 Settlement, Named Plaintiffs agree they will not act as principals or attorneys in any Suit if that  
5 activity would violate the restrictions on Class Counsel's Contractor Relations Initiative activities if  
6 such were undertaken by Class Counsel.

7 5.5. The Named Plaintiffs and Class Counsel agree that they (i) will not make any  
8 false statements of fact in any way concerning the Defendants, their affiliates or their respective  
9 officers, directors, and employees; and (ii) will not make any statements to third Persons that could  
10 constitute slander, libel, or which would have a tendency to subject to ridicule or disparagement the  
11 Defendants, their affiliates, their business operations, or their respective officers, directors, or  
12 employees.

13 **VI. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

14 6.1. Upon execution hereof, the parties agree that, subject to Court approval, this  
15 Action will be deemed, for purposes of this Settlement only, to satisfy the requirements for class  
16 certification under California law. Defendants have agreed to certification of the Settlement Class  
17 for purposes of this Settlement only.

18 6.2. Any certification of the Settlement Class hereunder, or otherwise, shall not  
19 constitute and shall not be construed (in this Action or in any other Suit) as an admission on the part  
20 of Defendants, or as the basis of a finding, or as evidence, that this Action or any other proposed or  
21 certified class action is appropriate for class treatment in a contested certification proceeding. This  
22 Agreement is without prejudice to the rights of Defendants to oppose (i) any requests for class  
23 certification in this Action should this Agreement be terminated or fail to be approved or  
24 implemented for any reason, or (ii) any requests for class certification in any Suit involving a  
25 proposed or certified class action.

26 6.3. If this Agreement is not approved, does not become effective, or if it is terminated  
27 or fails to be implemented for any reason, any certification, either preliminary or final, of the Class  
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1 or of any other alleged class shall be deemed null and void *ab initio* and without force or effect.

2 **VII. IMPLEMENTATION OF THE SETTLEMENT**

3 Upon execution hereof by all parties, the parties will respectively undertake the following  
4 actions to implement and obtain approval of the Settlement:

5 7.1. ***Use of Reasonable Efforts.*** Named Plaintiffs, Class Counsel, and Defendants  
6 will use reasonable efforts to obtain preliminary approval of this Settlement, final approval of this  
7 Settlement, and the entry of a Final Judgment and Order that dismisses this Action with prejudice  
8 and binds the Named Plaintiffs and all Settlement Class Members. Named Plaintiffs and Class  
9 Counsel will cooperate fully and completely with Defendants with respect to any and all appeals of  
10 the Final Judgment and Order and in obtaining the dismissal of any and all subsequent Suits against  
11 the Released Parties asserting Released Claims.

12 7.2. ***Preliminary Approval.*** On or promptly after the Settlement Date, Named  
13 Plaintiffs, Class Counsel, and Defendants will jointly present this Agreement and a motion seeking  
14 its preliminary approval to the Court. Counsel for the parties will take all appropriate steps to obtain  
15 the entry of a Preliminary Approval Order that (i) appoints Class Counsel for the purpose of  
16 representing the Class and all Class Members; (ii) conditionally certifies the Class for purposes of  
17 this Settlement only; (iii) preliminarily approves this Agreement and determines the Settlement to be  
18 sufficiently fair, reasonable, and adequate as to allow notice to be disseminated to the Class;  
19 (iv) approves notice to Class Members substantially in the form attached hereto as Exhibit A and in  
20 the manner described herein; (v) schedules a Fairness Hearing to determine, after notice to the Class,  
21 whether this Settlement should be finally approved as fair, reasonable, and adequate; and (vi)  
22 preliminarily bars and enjoins all Class Members, or any of them, from commencing, prosecuting, or  
23 continuing the prosecution of, any Suit asserting any of the Claims made in this Action, in any  
24 capacity against AHS or any of the Defendants, pending the final determination of whether this  
25 Settlement should be approved by the Court, except for proceedings in this Action relating to the  
26 approval of the Settlement. The Preliminary Approval Order will remain in effect until either (i) the  
27 Effective Date occurs, or (ii) the Court enters an order declaring this Settlement terminated and no  
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1 longer binding.

2       7.3.       ***Methods of Notifying Class Members.*** No later than fifty (50) days after the  
3 entry of the Preliminary Approval Order, the parties shall notify Class Members of the Settlement in  
4 the following manner:

5               a.       Defendants will send a Class Notice via first-class U.S. mail, postage  
6 prepaid to the last known address of each Class Member, as this information has been retained by  
7 AHS in the ordinary course of business. Defendants may distribute Class Notice using any bulk rate  
8 or pre-sorted mail rate made available by the United States Postal Service.

9               b.       Defendants will make available on an internet website, to be selected by  
10 Defendants and disclosed in the Class Notice, copies of the following items: the Class Notice, this  
11 Agreement, a Submittal Form and information about the Review Desk process described in  
12 paragraph 5.1.

13              c.       Defendants will make available to Class Members, upon request received  
14 by mail at a mailing address to be identified in the Class Notice, copies of the following items: (i) the  
15 Class Notice; (ii) this Agreement, (iii) a Submittal Form; and (iv) a summary of the Review Desk  
16 process described in paragraph 5.1.

17              d.       Following notice to the Class Members, as described in paragraph 7.3.a.,  
18 Defendants and/or their affiliates may communicate with Class Members by e-mail or any other  
19 cost-effective means of communication.

20       7.4.       At least seven (7) days prior to the Fairness Hearing, counsel for Defendants will  
21 provide Lead Class Counsel and the Court with a declaration from a competent declarant stating that  
22 the Class Notice Date has occurred.

23       7.5.       ***Exclusions from the Settlement Class.*** Any Class Member may request  
24 exclusion from the Settlement Class. Any Class Member who would like to request exclusion from  
25 the Settlement Class must make the request in accordance with the procedures and requirements set  
26 forth in the Class Notice. Beginning on the Friday immediately following the Class Notice Date and  
27 on every Friday until the time for requesting exclusion has expired, Class Counsel shall provide to  
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1 Defendants complete and accurate copies of all exclusion requests received during the week ending  
2 on the previous Friday. In addition, within ten (10) days after expiration of the deadline for Class  
3 Members to request exclusion from the Settlement Class, Class Counsel shall furnish the Opt-Out  
4 List to counsel for Defendants.

5       **7.6. *Written Objections to the Settlement.*** Any Settlement Class Member may  
6 present written objections explaining why the Settlement should not be approved as fair, reasonable,  
7 or adequate, or why attorneys fees, costs, and expenses should not be awarded to Class Counsel in  
8 the amount or in the manner set forth herein and in Exhibit F. Written objections must be submitted  
9 in accordance with the procedures and requirements set forth in the Class Notice.

10       **7.7. *Appearances at Fairness Hearing.*** Any Settlement Class Member may appear at  
11 the Fairness Hearing for purposes of supporting or objecting to the Settlement. Any Settlement  
12 Class Member who would like to make an appearance at the Fairness Hearing must make a Fairness  
13 Hearing appearance request in accordance with the procedures and requirements set forth in the  
14 Class Notice. Any Settlement Class Member who does not file and serve a written objection, as  
15 described in paragraph 7.6, or make a Fairness Hearing appearance request, as described in this  
16 paragraph 7.7, in a timely fashion and in the appropriate manner, shall be foreclosed from objecting  
17 to or seeking review of this Settlement whether by appeal or otherwise.

18       **7.8. *Final Judgment and Order.*** Upon the approval of the Settlement by the Court  
19 after the Fairness Hearing, Defendants will make a motion (which Plaintiffs will support) for entry  
20 of a Final Judgment and Order. This Final Judgment and Order shall, among other things,  
21 permanently foreclose and bar all Released Claims (including Claims for additional recovery,  
22 penalties, interest, attorneys fees, costs, and expenses) and all other Claims that any Settlement Class  
23 Members have alleged or could have alleged in connection with this Action.

24       **7.9. *Retention of Jurisdiction.*** The parties shall request that the Court shall retain  
25 jurisdiction over this Settlement for twenty-four (24) months after the Effective Date for purposes of  
26 implementing the Settlement. After 24 months from the Effective Date, this Action shall be deemed  
27 concluded and the Court's jurisdiction shall be relinquished.

1 **VIII. DETERMINATION OF ATTORNEYS FEES, COSTS, AND EXPENSES**

2 8.1. The parties have separately executed a stipulation regarding an award of attorneys  
3 fees, costs, and expenses in this Action, attached hereto as Exhibit F. The parties recognize that the  
4 Court has ultimate authority to approve or disapprove any award of attorneys fees, costs, and  
5 expenses. Because this Settlement is for the benefit of the Settlement Class, however, the parties  
6 further agree that any downward adjustment in attorneys fees, costs, and expenses that may be  
7 ordered by the Court will not be a basis or reason for terminating the Settlement under any provision  
8 hereof.

9 8.2. Defendants shall, no later than ten (10) days after entry of the Final Judgment and  
10 Order, deposit by wire transfer the sum of attorneys fees, costs, and expenses, approved by the Court  
11 and as reflected in the Final Judgment and Order, as payment for any and all services that have been  
12 or will be rendered by Class Counsel in this Action other than activities to be undertaken in  
13 connection with the Contractor Relations Initiative (the "Attorneys Fees & Expenses"). This wire  
14 transfer will be made into a segregated, identified interest bearing money market or similar account  
15 (the "Escrow Account") under the control of First Tennessee Bank, or such other agent mutually  
16 agreed upon by counsel for the parties (the "Escrow Agent"), to be held by it and disbursed pursuant  
17 to the terms hereof.

18 8.3 No later than ten (10) days after Lead Class Counsel transmits wiring instructions  
19 pursuant to paragraph 9.1, Defendants shall send by wire transfer to Lead Class Counsel the Named  
20 Plaintiffs Payment. Lead Class Counsel shall be responsible for ensuring that each Named Plaintiff  
21 receives the appropriate allocation of the Named Plaintiffs Payment. Defendants will have no  
22 obligation, liability, or responsibility whatsoever (i) for any taxes or other charges relating to the  
23 Named Plaintiffs Payment, or (ii) to ensure that the funds are allocated among the Named Plaintiffs  
24 fairly, correctly, or appropriately.

25 8.4 The Attorneys Fees & Expenses and the Named Plaintiffs Payment, together with  
26 any court-approved amounts to be paid to Class Counsel for activities to be undertaken in connection  
27 with the Contractor Relations Initiative, plus accrued interest on any such deposits, shall be the sole,  
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1 aggregate, maximum, and gross amount Defendants or any Released Party will owe or pay to Named  
2 Plaintiffs, the Class, and Class Counsel for any attorneys fees, costs, and expenses and/or any other  
3 amounts of any kind whatever incurred in connection with this Action, or for any other reason  
4 related to this Action. Defendants shall be reimbursed for any such taxes or charges that they are  
5 required to pay on Class Counsel's or any Settlement Class Members' behalf.

6 **IX. PAYMENT METHOD AND INSTRUCTIONS**

7 9.1. No later than ten (10) days after the Effective Date, Lead Class Counsel will  
8 transmit wiring instructions to the Escrow Agent for the payment of attorneys fees, costs, and  
9 expenses from the Escrow Account to Class Counsel.

10 9.2. Once Lead Class Counsel's wiring instructions have been received by the Escrow  
11 Agent, the Escrow Agent may cause funds on deposit in the Escrow Account to be reduced and paid  
12 out in accordance with this paragraph 9.2.

13 a. Funds may be paid out of the Escrow Account for the benefit of Class Counsel  
14 only upon a payment instruction from Lead Class Counsel, addressed to the Escrow Agent with  
15 copies to Defendants, that is in accordance with the Final Judgment and Order, or as otherwise  
16 directed by the Court.

17 b. The Escrow Agent shall make no payment pursuant to a payment  
18 instruction from Lead Class Counsel unless at least three (3) Business Days have elapsed since the  
19 receipt of the instruction and Defendants have interposed no objection to the payment. In the event  
20 of an objection, the dispute between the parties shall be resolved by the Escrow Agent, with the  
21 involvement of the Court as necessary.

22 c. Any accrued interest remaining in the Escrow Account after a payment  
23 instruction from Lead Class Counsel has been executed will be paid out of the Escrow Account, after  
24 deduction of the costs of the Escrow Agent, to Lead Class Counsel for the benefit of Class Counsel.

25 d. Any funds remaining in the Escrow Account after a payment instruction  
26 from Lead Class Counsel has been executed, and any accrued interest thereon has been paid out, and  
27 any costs of the Escrow Agent have been deducted, shall be paid out by the Escrow Agent to  
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1 Defendants, for their benefit.

2 9.3. Lead Class Counsel shall be responsible for ensuring that Class Counsel receives  
3 the appropriate allocation of the funds in the Escrow Account. Defendants will have no obligation,  
4 liability, or responsibility whatsoever (i) for any taxes or other charges relating to money paid out of  
5 the Escrow Account, or (ii) to ensure that the funds are allocated among Class Counsel fairly,  
6 correctly, or appropriately. To the extent any attorney or firm serving as Class Counsel or otherwise  
7 contests their or its portion of the total award for attorneys fees, costs, and expenses provided for  
8 hereby or approved by the Court, such attorney or firm must look solely to Lead Class Counsel, and  
9 not to Defendants, for their remedy. Under no circumstances will Defendants have any obligation  
10 whatsoever arising from this Action to any attorney or firm serving as Class Counsel or otherwise  
11 representing Class Members other than the obligations set forth herein.

12 9.4. Should the Agreement be terminated after the deposit of money into the Escrow  
13 Account but before the Effective Date, the Escrow Account shall be closed and its funds (including  
14 any interest remaining in the Escrow Account after deduction of any costs of the Escrow Agent)  
15 disbursed to the Defendants, as directed by Defendants, without any further order of the Court or any  
16 countersignature by any escrow agent other than the Escrow Agent.

17 9.5. Not later than thirty (30) days following the final closing of the Escrow Account,  
18 the Escrow Agent shall file with the Court a statement disclosing the distribution of funds from the  
19 Escrow Account.

20 9.6. Upon disbursement of all funds in the Escrow Account upon any termination of  
21 the Agreement, the Escrow Agent shall be released and relieved of all liabilities and obligations, if  
22 any, arising out of or relating to the administration of the Escrow Account and any such liabilities  
23 and obligations shall become the liabilities of Defendants.

24 **X. RELEASE, COVENANT NOT TO SUE, AND DISMISSAL OF CLAIMS**

25 10.1. Named Plaintiffs covenant and agree, and the entire Settlement Class will be  
26 deemed to have covenanted and agreed, that Named Plaintiffs and all Settlement Class Members  
27 will, by operation of the Final Judgment and Order and as of the Effective Date, have fully,  
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1 unconditionally, irrevocably, and completely released, waived, relinquished, and forever discharged  
2 all of the Released Parties from any and all Claims, including for an accounting, for the rescission or  
3 reformation of contracts (or any equitable theory whatsoever), and for prospective injunctive relief to  
4 mandate, cease, reform, or otherwise modify in any way the Released Parties' business practices,  
5 arising from Home Warranty Contracts concluded and events occurring during the Class Period and  
6 related to AHS's policies, procedures, and/or practices during the Class Period as alleged in, or  
7 reasonably related to those alleged in, the Action, including (i) Contractor Relations Practices; and  
8 (ii) AHS's policies, procedures and/or practices respecting the timing or promptness of responding to  
9 customer problems and situations, including expediting such responses, the diagnosis of customer  
10 problems and situations, authorizing repairs or replacements in response to customer requests,  
11 choosing between offering repairs and offering replacements, offering or requiring the acceptance of  
12 cash in lieu of repairs or replacements, denying claims (in part or in their entirety), applying contract  
13 limitations and exclusions, applying business rules for emergencies, responding to customer  
14 inquiries or escalating the attention given to such inquiries, or otherwise making decisions regarding  
15 either the application of the terms and conditions of Home Warranty Contracts, or the authorization  
16 of repair and replacement services pursuant to Home Warranty Contracts.

17 10.2. Named Plaintiffs covenant and agree, and the entire Settlement Class will be  
18 deemed to have covenanted and agreed, that Named Plaintiffs and all Settlement Class Members  
19 will, by operation of the Final Judgment and Order and as of the Effective Date, have fully,  
20 unconditionally, irrevocably, and completely released, waived, relinquished, and forever discharged  
21 all of the Released Parties from any and all Claims, including for damages based on theories of  
22 breach of express contract, breach of implied contract, reformation of contract, breach of warranty,  
23 fraud, misrepresentation, concealment, failure to disclose, fraudulent misrepresentation, negligent  
24 misrepresentation, bad faith failure to pay claims, breach of covenant or good faith and fair dealing,  
25 breach of local, state, or federal consumer protection laws or regulations, including Section 1750 and  
26 associated provisions of the California Civil Code and Sections 17200, 17500, and associated  
27 provisions of the California Business and Profession Code and other similar provisions of the laws  
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1 of California and of other states, or any other legal theory whatsoever, based on events occurring  
2 during the Class Period and allegedly caused by AHS's generalized policies, procedures, and/or  
3 practices as described in paragraph 10.1; provided, however, that the release contained in this  
4 paragraph shall not encompass any AHS customer's breach of Home Warranty Contract claim that is  
5 individualized and does not depend on any allegation of generalized AHS policies, procedures,  
6 practices, or any other reasonably disputed allegation of fact that applies in common across any  
7 subset of the Class.

8       10.3.       Named Plaintiffs covenant and agree, and the Settlement Class will be deemed to  
9 have covenanted and agreed, that Named Plaintiffs and each Settlement Class Member will, by  
10 operation of the Final Judgment and Order as of the Effective Date, have covenanted not to  
11 participate in any Suit with respect to any Released Party arising from or related to the Claims in  
12 equity released in paragraph 10.1 for a period of twenty-four (24) months beginning on the Effective  
13 Date, except as to any claims for breach of this Agreement. Each Settlement Class Member  
14 covenants not to participate in any Suit against the Defendants during this twenty-four (24) month  
15 period unless such Settlement Class Member has first complied with the terms hereof.

16       10.4.       In consideration of the benefits described herein, Named Plaintiffs agree, and  
17 each Settlement Class Member shall be deemed to have agreed, to the dismissal with prejudice of  
18 this Action.

19       10.5.       Nothing in this Agreement is intended to, or will operate to, release or  
20 compromise in any way any claims that have been brought, or may in the future be brought through  
21 amendments to pleadings filed by the State of Texas or otherwise, against AHS by the State of Texas  
22 in Cause No. 2006-21887, *American Home Shield of Texas, Inc. v. State of Texas* in the 295th  
23 Judicial District Court of Harris County, Texas. This paragraph shall not be read to diminish or cast  
24 into question the participation in this Settlement of any Settlement Class Member, including  
25 Settlement Class Members from Texas.

1 **XI. ENFORCEMENT AND TERMINATION**

2 11.1. Upon any alleged material breach by AHS of its obligations hereunder, Plaintiffs  
3 may, after giving AHS reasonably specific notice of the alleged material breach, and allowing a  
4 period no less than forty-five (45) days for AHS to correct the alleged breach, seek an order from the  
5 Court finding that AHS is in material breach of its commitments hereunder. In the event the Court  
6 makes a finding of material breach, the Court shall direct AHS to come into compliance with this  
7 Agreement within forty-five (45) days or such other period of time that the Court deems appropriate.  
8 In seeking such an order from the Court, Plaintiffs must not oppose any AHS request to be allowed a  
9 fair opportunity to present evidence and argument to the Court.

10 11.2. Defendants will have the option to terminate this Settlement, in their sole  
11 discretion, if the number of requests for exclusion from the Settlement exceeds five percent (5%) of  
12 the total number of Class Members. Defendants will have thirty (30) days from their receipt of the  
13 Opt-Out List in which to exercise, in their sole discretion, this right to terminate. In addition, this  
14 Agreement may also be terminated by Defendants, in their sole discretion, in the event that any of  
15 the following occur: (i) a motion seeking the Court's preliminary approval or final approval of this  
16 Settlement is denied or is granted but later reversed on appeal; or (ii) the entry of the Final Judgment  
17 and Order is reversed on appeal; or (iii) the Preliminary Approval Order is modified by the Court, or  
18 the Final Judgment and Order is modified by the Court or on appeal, in either case without the  
19 consent of Defendants. Notwithstanding the foregoing, any downward modification of the Final  
20 Judgment and Order either by the Court or on appeal, regarding the amount of attorneys fees, costs,  
21 and expenses to be awarded to Class Counsel shall not give Defendants, Plaintiffs, or Class Counsel  
22 the option to terminate this Agreement. Any termination pursuant to this paragraph shall be  
23 accomplished by filing with the Court a notice of termination, which shall be served on Lead Class  
24 Counsel. Upon the filing of such a termination notice, this Settlement shall be deemed to be  
25 terminated.

26 11.3. Notwithstanding any termination of this Agreement, paragraphs 4.3, 5.3.f, 6.2,  
27 6.3, 11.3, 12.4, 12.12, 12.17, 12.19, 12.20, 12.21, 12.22, and 12.23 (and the defined terms used  
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1 therein) shall remain in full force and effect. In the event this Settlement is terminated before the  
2 Effective Date for any reason, all other paragraphs of this Agreement, and the Settlement itself, shall  
3 be deemed null and void *ab initio* and without force or effect. In such event, this Agreement shall  
4 not be offered in evidence or used in this or any other Suit for any purpose including the existence,  
5 suitability for certification, or maintenance of any purported class. In such event, this Agreement  
6 and all negotiations, statements, proceedings, and documents prepared in connection herewith  
7 (including all legal briefs and exhibits thereto) shall not be deemed or construed to be an admission  
8 or confession by any party of any fact, matter, or proposition of law and shall not be offered by  
9 anyone adverse to the Defendants for any purpose whatsoever in any Suit. In the event of such  
10 termination, all parties to this Action shall stand in the same position as if this Agreement had not  
11 been negotiated, signed, or filed with the Court, except as expressly provided in this paragraph.

12 11.4 The Named Plaintiffs on behalf of themselves and each Settlement Class Member  
13 covenant and agree that if any Claims are filed against any Released Party that violate any injunction  
14 entered by the Court in this Action, the Released Party shall be entitled to reimbursement from the  
15 Settlement Class Member of any reasonable attorneys fees, expenses or costs actually incurred in  
16 seeking and obtaining the enforcement of such injunction as against such Claim.

## 17 **XII. MISCELLANEOUS PROVISIONS**

18 12.1. *Entire Agreement.* This Agreement, and all Exhibits attached hereto and hereby  
19 incorporated by reference, shall supersede any previous agreements or understandings between the  
20 parties with respect to the subject matter hereof. The exemplar of the FlexPlan Contract attached as  
21 Exhibit C is provided solely for illustrative purposes, and its inclusion herein is not intended to  
22 suggest that the specific contractual terms and language appearing in Exhibit C are necessary or  
23 required for FlexPlan Contracts generally. This Agreement is the entire agreement of the parties and  
24 may not be changed, modified, or amended except in writing signed by counsel on behalf of all  
25 parties, subject to Court approval.

26 12.2. *Modification By Writing Only.* This Agreement may be amended or modified  
27 only by a written instrument, signed by both Class Counsel and Counsel for the Defendants, and  
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1 subject to Court approval. Each party will promptly consider and respond to any other party's  
2 written request to modify the Settlement or this Agreement.

3 12.3. **Recommendation to Plaintiffs.** Class Counsel shall immediately recommend the  
4 Settlement to Named Plaintiffs and Class Members, and shall use their best efforts to obtain their  
5 approval of, support for, and participation in this Settlement.

6 12.4. **Expenses.** Except as otherwise expressly set forth herein, each party hereto will  
7 pay all costs and expenses incident to its negotiation and preparation hereof and to its performance  
8 and compliance with all agreements and conditions contained herein on its part to be performed or  
9 complied with, including the fees, expenses, and disbursements of its counsel, independent public  
10 accountants, and other advisors, whether or not the Final Judgment and Order shall have been  
11 entered by the Court. Nothing herein shall require Defendants to pay out or expend any monies  
12 other than as expressly provided herein.

13 12.5. **Illegality or Unenforceability of Provisions.** In the event that any one or more of  
14 the provisions contained herein shall for any reason be held in whole or in part to be invalid or  
15 unenforceable in any respect by any federal, state, administrative, judicial, arbitral, or other forum,  
16 bar association, or committee of competent jurisdiction, such invalidity or unenforceability shall not  
17 affect any other provision hereof if the parties hereto agree in writing to proceed as if such invalid or  
18 unenforceable provision had never been included herein. Absent such agreement, this Agreement  
19 shall be deemed terminated.

20 12.6. **Amount Paid Not a Penalty.** No consideration or amount or sum paid, credited,  
21 offered, or expended by Defendants in the performance hereof constitutes a penalty, fine, punitive  
22 damages, or other form of penalty for any alleged Claim or offense.

23 12.7. **Agreement Mutually Prepared; Construction.** This Agreement shall be deemed  
24 to have been mutually prepared by the parties and shall not be construed against any one of them by  
25 reason of authorship. Accordingly, no party hereto shall be considered to be the drafter of any of its  
26 provisions for the purpose of any statutes, case law, or rule of interpretation or construction that  
27 might otherwise cause any provision or paragraph hereof to be construed against its purported  
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1 drafter. Otherwise, this Agreement shall be construed in accordance with the four corners of the  
2 agreement and otherwise in accordance with the contract construction rules applicable to contracts  
3 made within the State of California. References in this Agreement to: (1) "herein," "hereto,"  
4 "herewith" and "hereunder" shall refer to this Agreement as a whole; (2) any paragraph or section  
5 shall be to a paragraph hereof, unless otherwise specified; (3) Exhibits shall refer to Exhibits  
6 attached hereto; and (4) "including" shall be deemed to be immediately followed by "without  
7 limitation." The preamble is hereby incorporated herein by reference.

8       12.8.       **Counterparts.** This Agreement may be executed in one or more counterparts,  
9 each of which shall be deemed an original but all of which together shall constitute one and the same  
10 instrument. For purposes hereof, a facsimile signature shall be deemed an original.

11       12.9.       **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of  
12 the parties, the Defendants, the Named Plaintiffs, the other Settlement Class Members, and their  
13 representatives, heirs, successors, and assigns. The parties expressly agree that the terms hereof,  
14 including all promises and covenants stated herein, are contractual and shall survive the execution  
15 hereof and entry of the Final Judgment and Order and shall continue in full force and effect  
16 thereafter in accordance with their terms.

17       12.10.       **Headings and Recitals.** The headings and subheadings (if applicable) hereof are  
18 included for convenience only and shall not be deemed to constitute part hereof or to affect its  
19 construction.

20       12.11.       **Waiver.** Any party may waive rights belonging to it hereunder or defaults or  
21 breaches hereof committed by the opposing party. No waiver by any party of any provision hereof  
22 or any default or breach hereunder, whether intentional or not, shall be valid, however, unless the  
23 same shall be in writing and signed by the party making such waiver. Nor shall such waiver be  
24 deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any  
25 rights arising by virtue of any prior or subsequent such default or breach.

26       12.12.       **Full Authority.** All counsel executing this Agreement or any related documents  
27 warrant and represent that they have full authority to do so and that they have the authority to make  
28



1 binding commitments in regards to the actions required or permitted to be taken hereunder in order  
2 to effectuate its terms.

3 12.13. ***Receipt of Advice of Counsel.*** The parties acknowledge, agree, and specifically  
4 warrant to each other that they have fully read this Agreement, received independent legal, tax, and  
5 financial advice with respect to the advisability of entering into it and with respect to the legal effect  
6 hereof. The parties further acknowledge, agree, and specifically warrant that they fully understand  
7 the legal effect hereof.

8 12.14. ***Opportunity to Investigate.*** The parties acknowledge, agree, and specifically  
9 warrant to each other that they and their counsel have had adequate opportunity to make whatever  
10 investigation and inquiries are deemed necessary or desirable in connection with the subject matter  
11 of the Settlement and the advisability of entering into this Agreement.

12 12.15. ***Good Faith Settlement.*** The parties acknowledge, agree, and specifically warrant  
13 to each other that they are entering into this Agreement freely, without duress, in good faith, and at  
14 arms length. The benefits, procedures and offers set forth in this Agreement constitute the entire  
15 consideration provided the Settlement Class Members under this Agreement and are agreed by all  
16 parties to constitute fair, reasonable and adequate consideration for the Releases and the other  
17 agreements and obligations of the Settlement Class Members reflected in this Agreement. Neither  
18 AHS nor any of the Released Parties shall have any obligations to any Settlement Class Member in  
19 respect of the Released Claims, except as expressly provided for in this Agreement.

20 12.16. ***Unknown Claims.*** The parties acknowledge, agree, and specifically warrant to  
21 each other that they are familiar with California Civil Code Section 1542, which provides:

22 A general release does not extend to claims which the creditor does not  
23 know or suspect to exist in his favor at the time of executing the  
24 release, which if known by him must have materially affected his  
settlement with the debtor.

25 Being aware of California Civil Code Section 1542, all parties releasing claims hereby expressly  
26 waive any and all rights they may have under this law and under any other federal or state law of  
27 similar effect with respect to the matters released herein.  
28

1       12.17. *Notices.* Unless otherwise provided herein, any notice, request, waiver,  
 2 instruction, application for Court approval, or application for Court order sought in connection  
 3 herewith or other document to be given by any party or to the other party shall be in writing and  
 4 delivered personally or sent by registered or certified mail, postage pre-paid, with copies by  
 5 facsimile to the attention of Plaintiffs' counsel or Defendants' counsel (as well as to any other  
 6 recipients that the Court may specify). As of the Settlement Date, the respective representatives are  
 7 as follows:

8                   For Defendants: **Martin R. Boles**  
 9                                   KIRKLAND & ELLIS LLP  
 10                                  777 South Figueroa Street  
 11                                  Los Angeles, California 90017  
 12                                  Telephone: (213) 680-8400  
 13                                  Facsimile: (213) 680-8500

14                   For Plaintiffs: **Francis A. Bottini, Jr.**  
 15                                   JOHNSON & BOTTINI, LLP  
 16                                  655 W. Broadway, Suite 1400  
 17                                  San Diego, CA 92101  
 18                                  Telephone: (619) 230-0063  
 19                                  Facsimile: (619) 233-5535

20       12.18. *Extensions of Time.* The parties may agree, subject to the approval of the Court  
 21 where required, to reasonable extensions of time to carry out the provisions hereof.

22       12.19. *No Beneficiaries.* No portion hereof shall provide any rights to, or be enforceable  
 23 by, any Person other than Named Plaintiffs, Class Members, Class Counsel, or Defendants. No third  
 24 party beneficiaries are created or intended to be created hereby. No Plaintiff or Class Member may  
 25 assign or otherwise convey any right to enforce any provisions hereof.

26       12.20. *Preservation of Privilege.* Nothing contained herein or in any order of the Court,  
 27 and no act required to be performed pursuant hereto or any order of the Court, is intended to  
 28 constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work  
 product protection, or common interest/joint defense privilege.

      12.21. *No Public Announcement.* Except as provided herein, none of the Named  
 Plaintiffs, Class Counsel, or Defendants shall, without prior written approval, make any press release



1 or other public announcement concerning this Agreement, except as and to the extent that any such  
2 party shall be so obligated by law, in which case the other party shall be advised and the parties shall  
3 use their reasonable efforts to cause a mutually agreeable release or announcement to be issued;  
4 provided, however, that the foregoing shall not apply to communications or disclosures necessary to  
5 implement the provisions hereof or to accounting and/or the Securities and Exchange Commission  
6 disclosure provisions or the rules of any stock exchange.

7       12.22.     ***Confidentiality and Return of Documents.*** With respect to all information and  
8 documents obtained by, through, or from Defendants, through formal and informal discovery, Class  
9 Counsel and Named Plaintiffs represent that they have not shared such information with any  
10 individuals or third parties, other than the Named Plaintiffs, their legal and support staff and retained  
11 experts, Judge Steven R. Denton, and the Honorable Howard B. Wiener (Ret.). All information  
12 related to this Action including that reflected in Class Counsel's files shall be maintained in the  
13 strictest confidence to be used only in carrying out the express terms hereof. Within forty-five (45)  
14 days of the conclusion of the 24-month Contractor Relations Initiative, the Named Plaintiffs and  
15 Class Counsel will return to Defendants any and all documents, data, and other materials provided  
16 by Defendants in their files, including those provided in connection with the Contractor Relations  
17 Initiative and all copies thereof. Upon satisfaction of this duty and responsibility, Class Counsel will  
18 certify in writing that all such data, documents, and materials, and all copies thereof, have been  
19 returned. Nothing herein is intended to or shall operate to prohibit: (1) disclosures by Named  
20 Plaintiffs and/or Class Counsel that, after reasonable notice to Defendants, are legally required to  
21 respond to legal processes or requests from government agencies, nor of any legally required  
22 disclosure not specified herein; (2) disclosures to the Named Plaintiffs' and Class Counsels'  
23 fiduciaries, insurers, attorneys, or financial representatives, provided an express agreement to  
24 maintain the confidentiality of such information is in place and being adhered to; and (3) Class  
25 Counsel from filing all documents necessary to obtain approval and confirmation of the Settlement  
26 and/or to enforce the Settlement.

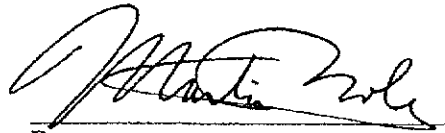
27       12.23.     ***Governing Law.*** This Agreement shall be governed by and construed in  
28

1 accordance with the domestic laws of the State of California without giving effect to any choice or  
2 conflict of law provision or rule (whether of the State of California or any other jurisdiction) that  
3 would cause the application of the laws of any jurisdiction other than the State of California.

1 IN WITNESS WHEREOF, Plaintiffs and Defendants have executed this Stipulation of  
2 Settlement on this 30 day of September, 2008.  
3

4 **DEFENDANTS**

5 American Home Shield of California, Inc.  
6 American Home Shield Corporation

7   
8

9 By:

Martin R. Boles, Esq.  
KIRKLAND & ELLIS LLP  
777 South Figueroa Street  
Los Angeles, CA 90017-5800  
Telephone: (213) 680-8428  
Facsimile: (213) 680-8500

10  
11  
12  
13 **NAMED PLAINTIFFS, CLASS COUNSEL,  
14 AND CLASS MEMBERS**  
15

16  
17 By:

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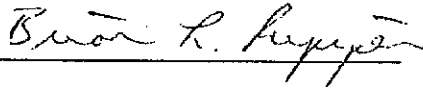
IN WITNESS WHEREOF, Plaintiffs and Defendants have executed this Stipulation of Settlement on this \_\_\_\_ day of September, 2008.

**DEFENDANTS**

American Home Shield of California, Inc.  
American Home Shield Corporation

By: \_\_\_\_\_

Martin R. Boles, Esq.  
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777 South Figueroa Street  
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Facsimile: (213) 680-8500

By:  \_\_\_\_\_

Brian L. Rupiper  
Senior Vice President, CFO and Treasurer  
American Home Shield Corporation

**NAMED PLAINTIFFS, CLASS COUNSEL,  
AND CLASS MEMBERS**

By: \_\_\_\_\_

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San Diego, CA 92101  
Telephone: (619) 230-0063  
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1 IN WITNESS WHEREOF, Plaintiffs and Defendants have executed this Stipulation of  
2 Settlement on this 30<sup>th</sup> day of September, 2008.

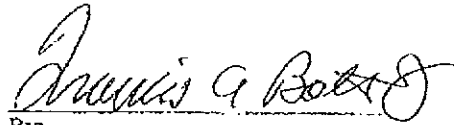
3  
4 **DEFENDANTS**

5 American Home Shield of California, Inc.  
6 American Home Shield Corporation  
7

8  
9 By:

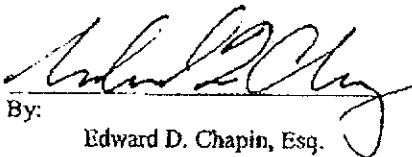
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14 **NAMED PLAINTIFFS, CLASS COUNSEL,  
15 AND CLASS MEMBERS**

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Chip Edleson

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Karon Edleson  
By: Karon Edleson

Chip Edleson  
By: L.B. Chip Edleson

COUNSEL LIST

EDLESON v. AMERICAN HOME SHIELD OF CALIFORNIA, INC  
CASE NO. 37-2007-00071725-CU-BT-CTL

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CALIFORNIA, INC. and AMERICAN HOME  
SHIELD CORPORATION